

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KELLI GRAY and all others
similarly situated,

Plaintiffs,

v.

SUTTELL & ASSOCIATES; MIDLAND
FUNDING, LLC; MARK T. CASE and
JANE DOE CASE, husband and wife;
and KAREN HAMMER and JOHN DOE
HAMMER,

Defendants.

NO. CV-09-251-EFS

**ORDER GRANTING MOTION TO
RECONSIDER AND/OR CLARIFY
RULING CONCERNING NET WORTH
DISCOVERY**

EVA LAUBER, DANE SCOTT, SCOTT
BOOLEN, JOEL FINCH, and all
others similarly situated,

Plaintiffs,

v.

ENCORE CAPITAL GROUP, INC.;
MIDLAND FUNDING, LLC; MIDLAND
CREDIT MANAGEMENT, INC.; SUTTELL
& HAMMER, PS.; MARK T. CASE and
JANE DOE CASE, husband and wife;
MALISA L. GURULE and JOHN DOE
GURULE; KAREN HAMMER and ISAAC
HAMMER, wife and husband;
WILLIAM SUTTELL and JANE DOE
SUTTELL, husband and wife;

Defendants.

Before the Court, without oral argument, is Defendants Suttell &
Associates, P.S., Mark T. Case, Jane Doe Case, Karen Hammer, and Jane Doe

1 Hammer's ("Gray-Suttell Defendants") Motion to Reconsider and/or Clarify
2 Ruling Concerning Net Worth Discovery (ECF No. [213](#)). The Gray-Suttell
3 Defendants move the Court for an order reconsidering or clarifying its
4 February 10, 2011 Order Granting and Denying in Part Plaintiff's Motions
5 to Compel and Setting Status Conference (ECF No. [205](#)), which required the
6 Gray-Suttell Defendants to provide net worth information:

7 Plaintiff asks the Court to compel responses to the First
8 Set of Interrogatories, which sought net worth information from
9 Suttell and from Mr. Case, Ms. Hammer, and their spouses. . . .

10 The Court finds this information is relevant to the issue
11 of statutory damages. See 15 U.S.C. § 1692ka(2)(B) (allowing
12 class statutory damages of up to 1% of a defendant's net
13 worth). Accordingly, the Court **grants** Plaintiff's request;
14 before the parties' December 7-8, 2010 deposition, Midland
15 shall either 1) answer Interrogatories 1-2 and Requests for
16 Production 1-25 or 2) stipulate to its net worth.

17 (ECF No. [205](#).)

18 The Gray-Suttell Defendants ask the Court to honor the parties'
19 stipulation that the Gray-Suttell Defendants need not provide net worth
20 discovery until the Court certifies a class – a stipulation that had been
21 communicated to, but overlooked by, the Court. Plaintiff did not
22 respond.¹ Indeed, the parties' August 11, 2010 Joint Certificate of
23 Counsel Regarding Continuance of Trial Date and Modification of
24 Scheduling Order (ECF No. [90](#)) provided:

25 In the event the trial date is continued and a new scheduling
26 order entered (as requested by the parties), Plaintiff would
27 propose that **Suttell defendants be required to fully respond
28 to the "net worth" written discovery within thirty (30) days
29 following the Court's Order certifying a class.** The Plaintiff
30 requests that the Court then allow sixty (60) days from the
31 receipt of those responses for the Plaintiff to serve (and
32 email to the Court) the net worth expert report. Plaintiff

¹ The Court may construe Plaintiff's failure to respond as their
consent to entry of an adverse order. LR 7.1(e).

1 would then agree that the pending Motion to Compel the Suttell
2 Defendants' Responses regarding Net Worth is mute [sic], should
3 be stricken with permission to re-file if the above is not
4 timely accomplished.

5 (ECF No. [90](#)) (emphasis added). Counsel for the Gray-Suttell Defendants
6 also advised the Court that the parties had so stipulated during oral
7 argument and in briefing on Plaintiff's motions to compel. (ECF No.
8 [139](#).)

9 Based upon the parties' stipulation, **IT IS ORDERED:**

10 1. The Gray-Suttell Defendants' Motion to Reconsider and/or Clarify
11 Ruling Concerning Net Worth Discovery (**ECF No. [213](#)**) is **GRANTED**.

12 2. The Court's Order Granting and Denying in Part Plaintiff's
13 Motions to Compel and Setting Status Conference (ECF No. [205](#)) shall be
14 amended to:

15 a. provide that the Gray-Suttell Defendants need not answer
16 Plaintiff's net worth discovery requests unless and until such time as
17 the Court certifies the class.

18 b. strike the following language from Page 19, Paragraph E:
19 "Accordingly, the Court **grants** Plaintiff's request; before the parties'
20 December 7-8, 2010 deposition, Midland shall either 1) answer
21 Interrogatories 1-2 and Requests for Production 1-25 or 2) stipulate to
22 its net worth." An amended order will follow.

23 **IT IS SO ORDERED.** The District Court Executive is directed to enter
24 this Order and distribute copies to counsel.

25 **DATED** this 2nd day of March 2011.

26 _____
s/Edward F. Shea

EDWARD F. SHEA

United States District Judge

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